IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3220 OF 2006

Shri Harishchandra Kanya Bhaldar ..Pettiioner
Vs.
1. Shri Vyankat Baburao Bansode and ors. ..Respondents

Mr. R.K. Mendadkar and Helen K. Mandlik for petitioner.
Mr. N.V. Bandiwadekar for respondent no.1.
Mr. Uday Warunjikar for respondent no.2.
Mr. M.H. Solkar, AGP for respondent no.3.

CORAM: B.H. MARLAPALLE, J.

Date : August 25, 2006.

P.C.:

1. Heard Mr. Mendadkar the learned counsel for the petitioner.

2. Rule. Rule is taken up for final hearing forthwith. Mr.Bandiwadekar the learned counsel waives service for the respondent no.1 and Mr. Warunjikar the learned counsel waives service for the respondent no.2-Management. Mr. Solkar the learned AGP waives service for respondent no.3.

2. The petitioner is presently holding the post of Head Master of Shri Hari Hareshwar High School,

Hareshwar, Taluka Shrivardhan, District Raigad with effect from 1/10/2004 and the present respondent no.1 filed Appeal No.63 of 2005 taking his claim for the said post and alleged that he was illegally superseded.

3. Admittedly, the impugned Judgment and Order dated 1/3/2006 passed by the School Tribunal is ex parte and both the petitioner as well as the respondent claim to be from reserved category for which the said post of Head Master is reserved as per the roster. The appeal has been allowed by the School Tribunal with a direction to appoint the respondent no.1 in place of the petitioner.

4. Looking to the rival claims made by both the petitioner as well as the respondent no.1 regarding their seniority as Assistant Teacher in secondary school (trained Graduate teachers), it is necessary that Appeal No.63 of 2005 is decided afresh after hearing the petitioner and the respondents. It is not known as to why the Management did not take steps to contest the appeal and same is the case of the present petitioner. However, interest of justice would be

better served if the appeal is remanded for fresh decision after hearing all the parties concerned.

5. Hence, the petition is partly allowed and the impugned judgment and order dated 1/3/2006 in Appeal No.63 of 2005 is hereby quashed and set aside and the said appeal is remanded for fresh adjudication but subject to the condition that an amount of Rs.2000/- shall be remitted by the present petitioner with the School Tribunal within a period of two weeks from today. All the parties shall appear before the School Tribunal on 31st August, 2006 and the petitioner and respondent nos.2 and 3 shall file their respective Written Statement on or before 5/9/2006. The appeal shall be heard and decided afresh in any case by 31st October, 2006. The respondent no.1 is allowed to withdraw the amount of costs to be deposited with the School Tribunal by the petitioner.

6. Rule is made absolute accordingly.

(B.H. Marlapalle,J.)